

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEVAS MULTIMEDIA PRIVATE

LTD.,

Petitioner,

v.

ANTRIX CORP. LTD.,

Respondent.

C18-1360 TSZ

ORDER

THIS MATTER comes before the Court on the parties' July 16, 2020, Joint Status Report, docket no. 39, which the Court treated as a motion to lift the stay or, in the alternative, to require Respondent to post security during the stay. *See* Minute Order (docket no. 40). Having reviewed the parties' supplemental briefs and declarations, and the exhibits attached thereto, filed in support of, and in opposition to, the motion, the Court enters the following order.

Background

The parties in this case, Petitioner Devas Multimedia Private Ltd. and Respondent Antrix Corp. Ltd., are both Indian corporations, the latter of which is wholly owned by the Indian government. In 2005, the parties entered the "Agreement for the Lease of

Space Segment Capacity on ISRO/Antrix S-Band Spacecraft by Devas Multimedia Pvt. Ltd.” dated January 28, 2005 (“Agreement”), by which Respondent agreed to build, launch, and operate two satellites and to make available 70 MHz of S-band spectrum to Petitioner. Petition to Confirm Foreign Arbitral Award (“Petition”) at ¶ 7 (docket no. 1).

Under Article 20 of the Agreement, the parties agreed to refer any disputes to arbitration, providing in relevant part:

In the event of there being any dispute or difference between the Parties hereto as to any clause or provision of this Agreement or as to the interpretation . . . such dispute or difference shall be referred to the senior management of both Parties to resolve within three (3) weeks failing which it will be referred to an Arbit[r]al Tribunal comprising of three arbitrators, one to be appointed by each party (i.e. DEVAS and ANTRIX) and the arbitrators so appointed will appoint the third arbitrator.

The seat of Arbitration shall be at NEW DELHI in India.

The Arbitration proceedings shall be held in accordance with the rules and procedures of the ICC (International Chamber of Commerce) or UNCITRAL.

. . .

Any decision or award made by the board of Arbitration shall be final, binding and conclusive on the Parties and entitled to be enforced to the fullest extent permitted by Laws and entered in any court of competent jurisdiction.

Agreement, Hellmann Decl., Ex. 3 (docket no. 2-1 at 124–25).

In February 2011, Respondent allegedly repudiated the Agreement, “destroying” Petitioner’s business, and in June 2011, Petitioner commenced arbitration proceedings to recover its losses. Petition at ¶¶ 12, 17 (docket no. 1). On September 14, 2015, a three-member arbitral tribunal of the International Chamber of Commerce (“ICC”),¹ based in

¹ The ICC panel, referred to by Petitioner as a “blue-ribbon arbitral panel,” was comprised of English barrister V.V. (Johnny Veeder), Q.C., former Indian Supreme Court Chief Justice Dr. A.S. Anand, and Professor Michael Pryles of Australia. Joint Status Report (docket no. 39 at 3 & n.2).

1 New Delhi, issued a final arbitral award (“Award”), holding Respondent accountable for
2 breach of contract and awarding Petitioner \$562.5 million plus pre- and post-award
3 interest “for damages caused by [Respondent’s] wrongful repudiation.” Award,
4 Hellmann Decl., Ex. 1 (docket no. 2-1 at 98); Petition at ¶¶ 27–28 (docket no. 1).

5 After the Award was issued, Petitioner filed a petition in the High Court of Delhi
6 based in New Delhi to enforce the award under the Indian Arbitration and Conciliation
7 Act, 1996 (“Indian Arbitration Act”). Roy Decl. ¶ 2 (docket no. 42). Respondent then
8 filed a petition to set aside the Award under the Indian Arbitration Act in the City Civil
9 Court based in Bangalore. *Id.* at ¶ 3. In May 2018, the High Court of Delhi dismissed
10 Petitioner’s enforcement action for lack of jurisdiction. *Id.* at ¶ 5. Petitioner appealed
11 that decision to the Indian Supreme Court and, during the appeal, successfully sought a
12 stay in the Bangalore proceedings. *Id.* at ¶¶ 5–6. A hearing before the Indian Supreme
13 Court was initially scheduled for April 2020, but the case has not yet been taken up for
14 hearing by that court in light of the COVID-19 pandemic. *Id.* at ¶ 7. To date, the
15 question of whether New Delhi or Bangalore courts have jurisdiction over proceedings
16 concerning the parties’ Award remains unresolved. Joint Status Report (docket no. 39 at
17 2).

18 On September 13, 2018, Petitioner petitioned this Court to confirm the Award
19 under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards,
20 June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997 (“New York Convention” or
21 “Convention”), implemented by 9 U.S.C. § 201 *et seq.* Petition at ¶ 43 (docket no. 1);
22 *see also* 28 U.S.C. § 1330(b).

1 In November 2018, the Respondent filed a Motion to Dismiss and Opposition to
2 Confirm Foreign Arbitral Award, docket no. 13, asserting that the action should be
3 dismissed for lack of personal jurisdiction or based on a forum non-conveniens theory;
4 Respondent's motion further asserted that the Award was invalid and violated public
5 policy. The Court concluded that it had jurisdiction under 28 U.S.C. § 1330(b), declined
6 to dismiss the case under the forum non-conveniens doctrine, and stayed this matter for
7 one year pursuant to Article VI of the New York Convention. Minute Order (docket no.
8 28 at 2).² The Court declined to require Respondent to post security during the stay.
9 Minute Order (docket no. 33).

10 The Court directed the parties to file a joint status report by April 15, 2020.
11 Minute Order (docket no. 28 at 2). On July 16, 2020,³ the parties filed the instant motion,
12 a Joint Status Report in which they disputed whether the Court should lift or extend the
13 stay, and, if the latter, whether Respondent should be required to post security. Joint
14 Status Report (docket no. 39 at 3–11). The Court treated the Joint Status Report as a
15 motion to lift the stay or, in the alternative, to require Respondent to post security during
16 the stay. Minute Order (docket no. 40).

17 **Discussion**

18 Petitioner argues that the Court should lift the stay or, in the alternative, require
19 Respondent to post security. Article VI of the New York Convention provides that a
20

21 ² In that order, the Court did not address Respondent's assertion that the Award was invalid or violated
22 public policy. *See* Minute Order (docket no. 28).

23 ³ The parties twice filed stipulated motions to extend the deadline to submit their joint status report, and
the Court granted both motions. *See* Minute Orders (docket nos. 36 & 38).

1 court “may, if it considers it proper, adjourn the decision on the enforcement of the
 2 award” while parallel proceedings are pending in the originating forum. *Europcar Italia,*
 3 *S.p.A. v. Maiellano Tours, Inc.*, 156 F.3d 310, 316 (2d Cir. 1998); *see Ministry of Def. &*
 4 *Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 665
 5 F.3d 1091, 1100 (9th Cir. 2011) (noting that a district court may stay confirmation of an
 6 arbitral award for prudential reasons).

7 Whether a court should exercise its discretion to lift a stay order under Article VI
 8 of the New York Convention appears to be an issue of first impression in this circuit.
 9 The Second Circuit has held that courts should consider six factors in determining
 10 whether a stay is warranted, including:

11 (1) the general objectives of arbitration—the expeditious resolution of disputes
 12 and the avoidance of protracted and expensive litigation;

13 (2) the status of the foreign proceedings and the estimated time for those
 14 proceedings to be resolved;

15 (3) whether the award sought to be enforced will receive greater scrutiny in the
 16 foreign proceedings under a less deferential standard of review;

17 (4) the characteristics of the foreign proceedings including (i) whether they were
 18 brought to enforce an award (which would tend to weigh in favor of a stay) or to
 19 set the award aside (which would tend to weigh in favor of enforcement);
 20 (ii) whether they were initiated before the underlying enforcement proceeding so
 21 as to raise concerns of international comity; (iii) whether they were initiated by the
 22 party now seeking to enforce the award in federal court; and (iv) whether they
 23 were initiated under circumstances indicating an intent to hinder or delay
 resolution of the dispute;

(5) a balance of the possible hardships to each of the parties, keeping in mind that
 if enforcement is postponed under Article VI of the Convention, the party seeking
 enforcement may receive “suitable security . . . ; and

(6) any other circumstances

1 *Europcar*, 156 F.3d at 317–18; accord *Compañía de Inversiones Mercantiles, S.A. v.*
2 *Grupo Cementos de Chihuahua S.A.B. de C.V.*, 970 F.3d 1269 (10th Cir. 2020); *Four*
3 *Seasons Hotels & Resorts, B.V. v. Consorcio Barr S.A.*, 377 F.3d 1164, 1172 n.7 (11th
4 Cir. 2004). “Because the primary goal of the Convention is to facilitate the recognition
5 and enforcement of arbitral awards, the first and second factor . . . should weigh more
6 heavily in the district court’s determination.” *Europcar*, 156 F.3d at 318.

7 Despite Respondent’s argument to the contrary, there is simply no reason to
8 consider these factors only in the first instance, when a court initially decides to stay
9 proceedings. These factors are equally relevant to the Court’s analysis here, whether the
10 stay is still warranted. Nor is Petitioner required to show that conditions have changed as
11 to warrant relief from the stay. The “changed circumstances” authority on which
12 Respondent relies, *see, e.g., Johnson v. Inos*, 619 F. App’x 651 (9th Cir. 2015)
13 (unpublished), *Tyrer v. City of S. Beloit*, 516 F.3d 659 (7th Cir. 2008), offers little
14 guidance here: None of those cases address the appropriateness of a stay order under the
15 New York Convention, which has the “primary goal . . . to facilitate the recognition and
16 enforcement of arbitral awards.” *Europcar*, 156 F.3d at 318. The temporary nature of
17 the Court’s stay order also counsels against requiring Petitioner to make an additional
18 showing of changed circumstances.

19 Accordingly, the six *Europcar* factors guide the Court’s determination on whether
20 a stay continues to be warranted in this case. Considering the first factor, there is no
21 question that lifting the stay will further the “general objectives of arbitration—the
22 expeditious resolution of disputes and the avoidance of protracted and expensive
23 litigation,” if, as Petitioner asserts, Respondent’s set-aside petition pending in Indian

1 courts lacks merit. *See id.* at 317. The Court acknowledges, however, that if Respondent
2 ultimately prevails on its set-aside petition, Respondent must then move to vacate any
3 confirmation order, resulting in even more litigation. *See id.* (concluding that if “there is
4 a possibility that the award will be set aside, a district court may be acting improvidently
5 by enforcing the award prior to the completion of the foreign proceedings”); *see, e.g.,*
6 *Thai-Lao Lignite (Thailand) Co., Ltd. v. Gov’t of Lao People’s Democratic Republic*, 864
7 F.3d 172, 186–87, 189 (2d Cir. 2017). As a result, the first factor does not assist the
8 Court in deciding whether to lift or extend the stay.

9 The second factor, the current status of the Indian proceedings and the estimated
10 time for those proceedings to be resolved, weighs heavily in favor of lifting the stay. The
11 dispute arises from conduct in February 2011, and the Award was issued in September
12 2015. Petition at ¶¶ 12, 23 (docket no. 1). The enforcement and set-aside proceedings in
13 India have been pending since the Award was issued five years ago; and the parties’ Joint
14 Status Report provides no estimate of when the Indian courts will resolve the
15 jurisdictional dispute, let alone when they will resolve the underlying merits of those
16 proceedings. Joint Status Report (docket no. 39 at 2–3); *see Hardy Expl. & Prod. (India),*
17 *Inc. v. Gov’t of India, Ministry of Petroleum & Nat. Gas*, 314 F. Supp. 3d 95, 106–108
18 (D.D.C. 2018) (declining to stay proceedings under Article VI where five years had
19 passed since the award was issued, an Indian court had dismissed the Indian
20 government’s set-aside action for lack of jurisdiction, and the delays were largely due to
21 the Indian government and the Indian Supreme Court). This factor, which weighs
22 heavily in the Court’s determination, counsels in favor of lifting the stay. *See Europcar,*
23 156 F.3d at 317–18.

1 The Court next considers the third factor, whether the Award “will receive greater
2 scrutiny” in Indian courts “under a less deferential standard of review.” *Europcar*, 156
3 F.3d at 317. Respondent does not challenge Petitioner’s assertion that “the grounds for
4 setting aside the Award under the Indian Arbitration Act mirror the grounds in the New
5 York Convention.” Petitioner Supp. Br. (docket no. 43 at 11); *see generally* Respondent
6 Supp. Br. (docket no. 41). Although Respondent previously argued in a footnote that
7 Indian courts “are not limited to the grounds provided in the New York Convention and
8 may consider grounds for invalidating an arbitral award under their own domestic
9 arbitration laws,” Respondent Mtn. to Dismiss (docket no. 13 at 8 n.3), neither party has
10 cited authority indicating whether Indian courts consider the same or similar grounds as
11 those provided under Article V of the Convention, the applicable standard here. *See*
12 *Hardy*, 314 F. Supp. 3d at 107 (faulting the Indian government for failing to cite authority
13 “indicating that Indian courts have broader discretion when deciding whether to enforce
14 arbitral awards,” but “tak[ing] India’s word”). This factor does not weigh in favor of
15 lifting or extending the stay.

16 The fourth factor instructs the Court to examine the “characteristics” of the Indian
17 proceedings. *Europcar*, 156 F.3d at 318. Before Petitioner initiated proceedings in this
18 Court, both parties initiated proceedings in Indian courts, Petitioner to enforce the Award
19 and Respondent to set it aside. Petition at ¶¶ 12, 23 (docket no. 1). These facts might
20 counsel in favor of extending the stay. *See Europcar*, 156 F.3d at 317 (concluding that
21 where the petitioner first sought to enforce the award in the originating forum, “the
22 argument for enforcement . . . in the district court loses force because the possibility of
23 conflicting results and the consequent offense to international comity”). On the other

1 hand, Respondent initiated proceedings in Bangalore despite Petitioner's pending action
2 in New Delhi, the designated "seat of Arbitration" under the Agreement. Roy Decl. at
3 ¶¶ 2–3 (docket no. 42); Agreement, Hellmann Decl., Ex. 3 (docket no. 2-1 at 125); *see*
4 *also Hardy*, 314 F. Supp. 3d at 102 (noting that the New Delhi High Court had concluded
5 that "the seat of arbitration" determined the forum in which to initiate a set-aside
6 petition). Under these facts, there is some indication of "intent to hinder or delay
7 resolution of the dispute," which counsels in favor of lifting the stay. *See Europcar*, 156
8 F.3d at 318.

9 The fifth factor, balancing the parties' possible hardships, weighs in favor of
10 lifting the stay. Petitioner alleges that the delayed proceedings have enabled the Indian
11 government to divest Respondent of assets before the Award is enforced. Ahmad Decl.
12 at ¶¶ 24–27 (docket no. 44). Although Respondent denies those allegations, there is little
13 doubt that the delayed enforcement of the Award, particularly given the amount of money
14 at issue, has burdened Petitioner, which to date has not received any "suitable security."
15 *See Europcar*, 156 F.3d at 318; *Hardy*, 314 F. Supp. 3d at 108 ("[G]iven the length of
16 time [petitioner] has waited to receive the award, and the amount of money at issue,
17 [petitioner] would be burdened should the [c]ourt delay confirmation of the award.").
18 This factor counsels in favor of lifting the stay.

19 Finally, the Court considers any other relevant circumstances under the sixth
20 factor. The Court notes that related proceedings in France, the Netherlands, Switzerland,
21 and the United Kingdom have all proceeded *despite* the ongoing jurisdictional dispute in
22 India. Petition at ¶¶ 34–39; Joint Status Report (docket no. 39 at 9–10). This factor also
23 counsels in favor of lifting the stay.

1 Overall, examination of the *Europcar* factors demonstrates that a stay is no longer
2 warranted in this case. Again, the Court gives considerable weight to the protracted
3 nature of this case—that more than five years have passed since the Award was issued,
4 and nearly ten years have passed since the contract dispute arose. Petition at ¶¶ 12, 23
5 (docket no. 1). Likewise, since the stay was entered more than one year ago, there have
6 been no new developments in the Indian courts on the jurisdictional issue or on the merits
7 of the proceedings. Joint Status Report (docket no. 39 at 2–3).

8 In lifting the stay, Petitioner asks this Court to immediately confirm the Award,
9 arguing that an “application to the District Court for confirmation of [an] arbitration
10 award [is] a motion, not a pleading,” and that the briefing in this action is complete.
11 Petitioner Supp. Br. (docket no. 43 at 13 & n.5). The Court agrees that the Petition
12 should be treated as a motion. The Ninth Circuit has noted that “[c]onfirmation [of an
13 arbitral award] under the Convention is a summary proceeding in nature, which is not
14 intended to involve complex factual determinations, other than a determination of the
15 limited statutory conditions for confirmation or grounds for refusal to confirm.”
16 *Castro v. Tri Marine Fish Co.*, 921 F.3d 766, 773 (9th Cir. 2019) (quoting *Zeiler v.*
17 *Deutsch*, 500 F.3d 157, 169 (2d Cir. 2007)); see *TermoRio S.A. E.S.P. v. Electranta S.P.*,
18 487 F.3d 928, 940 (D.C. Cir. 2007) (concluding that a hearing on a petition to confirm an
19 arbitral award under the Convention “will take the form of a summary procedure in the
20 nature of federal motion practice”) (citation omitted); see also *Hall St. Assocs., LLC v.*
21 *Mattel, Inc.*, 552 U.S. 576, 582 (2008) (concluding that applications for orders brought
22 under 9 U.S.C. §§ 9–11 “will get streamlined treatment as a motion” under the Federal
23 Arbitration Act); 9 U.S.C. § 208.

1 The Court concludes that the issues raised in the Petition, Respondent's Motion to
2 Dismiss and Opposition to Petition, the Response, the Reply, and the parties'
3 supplemental briefing, *see* docket nos. 1, 13, 22, 26, 41 & 43, and the declarations and
4 exhibits attached thereto, are ripe for consideration. The Court therefore sets oral
5 argument on the record to determine whether the Petition should be granted or denied.

6 **Conclusion**

7 For the foregoing reasons, the Court ORDERS:

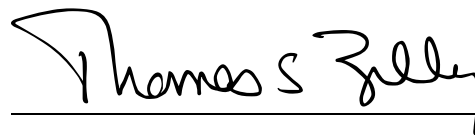
8 (1) The motion to lift the stay, docket no. 39, is GRANTED;

9 (2) Oral argument, which will take place virtually using the ZoomGov.com
10 platform, is hereby SCHEDULED for 10:30 a.m. on Wednesday, October 14, 2020.
11 Counsel will receive an invitation to the Zoom session by email; and

12 (3) The Clerk is directed to send a copy of this Order to all counsel of record.

13 IT IS SO ORDERED.

14 Dated this 17th day of September, 2020.

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17 Thomas S. Zilly
18 United States District Judge
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